

ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP



ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA & UNCITRAL RCAP

2 NOVEMBER 2023 09:30 - 17:45 GMT+9

Conference Hall, 51F Trade Tower, Seoul, Korea

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ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

PROGRAMME

KMOJ-UNCITRAL ADR Special Session on ISDS Reform

Date/Time	2 November 2023, 09.30-17.45 KST
Venue	Conference Hall, 51 st floor, Trade Tower, Seoul, Republic of Korea
Platform	Hybrid
Hosts	Ministry of Justice, Republic of Korea and UNCITRAL RCAP

Thursday, 2 November 2023

Time	Programme	Speaker
Opening Session		
09:30 – 10:00 (30 mins)	Welcome Remarks: <ul style="list-style-type: none">Mr. Koo, Sang-Yeop, Deputy Minister for Legal Affairs/Chief Prosecutor, Ministry of Justice, Republic of KoreaMs. Anna Joubin-Bret, Secretary, UNCITRAL	
	Congratulatory Remarks: <ul style="list-style-type: none">Prof. Hi-Taek Shin, Arbitrator, Twenty EssexMs. Meg Kinnear, Secretary-General, ICSID	
Session 1: Investment Mediation <i>Moderator: Prof. Jaemin Lee (Professor, Seoul National University School of Law)</i>		
10:00 – 10:10 (10 mins)	Overview of (i) UNCITRAL Model Provisions on Mediation for International Investment Disputes and (ii) UNCITRAL Guidelines on Mediation for International Investment Disputes	Mr. Jae Sung Lee (Senior Legal Officer, UNCITRAL)
10:10 – 11:05 (55 mins)	<ul style="list-style-type: none">Mr. George Lim SC, Chairman, SIMCMs. Donna Huang, Director, Arbitration and ADR, North Asia, ICC Dispute Resolution ServicesMs. Jinyoung Seok, Legal Counsel, PCAMs. Sae Youn Kim, Attorney, Kim & ChangMr. Mike McClure KC, Partner, Herbert Smith Freehills	
11:05 – 11:15 (10 mins)	Q & A	
11:15 – 11:30 (15 mins)	Break	
Session 2: The Codes of Conduct <i>Moderator: Prof. Hi-Taek Shin (Arbitrator, Twenty Essex)</i>		
11:30 – 11:40 (10 mins)	Overview of (i) UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution and (ii) UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution	Ms. Anna Joubin-Bret (Secretary, UNCITRAL)
11:40 – 12:35 (55 mins)	<ul style="list-style-type: none">Ms. Meg Kinnear, Secretary-General, ICSIDMr. Christopher Lau SC, Arbitrator, 3 Verulam BuildingsMr. Eric Ng, Deputy Secretary General, HKIACMr. Yun Jae Baek, Partner, Yulchon LLCProf. Joongi Kim, Professor, Yonsei University School of Law	
12:35 – 12:45 (10 mins)	Q & A	

Time	Programme	Speaker
12:45 – 14:30 (105 mins)	Lunch break	
Session 3: Advisory Centre on International Investment Law <i>Moderator: Prof. Seung Wha Chang (Professor, Seoul National University School of Law)</i>		
14:30 – 14:40 (10 mins)	Overview of Working Group III's Discussions on the Advisory Centre	Ms. Young Shin Um (Senior Deputy Director, Ministry of Justice, Republic of Korea)
14:40 – 15:35 (55 mins)	<ul style="list-style-type: none"> • Mr. Yudai Ueno, Director, Southeast Asia Economic Partnership Agreement (EPA) Division, Ministry of Foreign Affairs, Japan • Mr. Ernesto Simanungkalit, Deputy Director of Law and Economic Treaties, Ministry of Foreign Affairs, Indonesia • Mr. Adeel Mumtaz Khokhar, Director (UN-I), United Nations Division, Ministry of Foreign Affairs, Pakistan • Mr. Sun Thathong, Counsellor, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Thailand 	
15:35 – 15:45 (10 mins)	Q & A	
15:45 – 16:00 (15 mins)	Break	
Session 4: Dispute Prevention and Mitigation <i>Moderator: Mr. Shane Spelliscy (Chairperson, UNCITRAL Working Group III)</i>		
16:00 – 16:10 (10 mins)	Overview of Draft Guidelines on the Prevention and Mitigation of International Investment Disputes	Mr. Jae Sung Lee (Senior Legal Officer, UNCITRAL)
16:10 – 17:20 (70 mins)	<ul style="list-style-type: none"> • Mr. Donghwan Shin, Director/Senior Prosecutor, Ministry of Justice, Republic of Korea • Ms. Zhang Shuang, Official, Department of Treaty and Law, Ministry of Commerce, China • Mr. Siddharth Malik, Director (Economic Diplomacy), Ministry of External Affairs, India • Ms. Natalie Morris-Sharma, Director, Attorney-General's Chambers, Singapore • Ms. Lại Thị Vân Anh, Deputy Director General, Department of International Law, Ministry of Justice, Vietnam • Ms. Priyanka Kher, Senior Private Sector Specialist, The World Bank 	
17:20 – 17:30 (10 mins)	Q & A	
Closing Session		
17:30 – 17:45 (15 mins)	<ul style="list-style-type: none"> • Ms. Athita Komindr, Head, UNCITRAL RCAP • Ms. A Ra Jo, Director/Senior Prosecutor, Ministry of Justice, Republic of Korea • Mr. Shane Spelliscy, Chairperson, UNCITRAL Working Group III 	

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MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

BIOGRAPHIES



Koo, Sang-Yeop

Deputy Minister for Legal Affairs
Ministry of Justice, Republic of Korea

Mr. Koo Sang-yeop is Deputy Minister for Legal Affairs of the Ministry of Justice of the Republic of Korea, appointed in September 2023.

Mr. Koo holds a Bachelor's and a Master's degree in Law from Seoul National University. After passing the 39th National Bar Examination in 1997, he has served as a prosecutor since 2004.

Mr. Koo worked as Director of International Legal Affairs Division at the Ministry of Justice in 2016. He also held various leadership positions in the Prosecutors' Office, including Director of Fair Trade and Tax Audit Department (2017), Fair Trade Investigation Department (2018), and Special Investigation Department (2019) at the Seoul Central District Prosecutors' Office. Prior to his appointment as Deputy Minister, he served as the 1st Deputy Chief Prosecutor of Seoul Southern District Prosecutors' Office.

Mr. Koo has also devoted himself to studying law while pursuing his career. He earned an LL.M degree at Harvard Law School in 2008, a Ph.D. in Civil Law, and a S.J.D. degree in Fair Trade Criminal Law at Seoul National University School of Law in 2012 and 2019, respectively.



Anna Joubin-Bret

Secretary
United Nations Commission on International Trade Law
(UNCITRAL)

Ms. Anna Joubin-Bret is the Secretary of the United Nations Commission on International Trade Law (UNCITRAL) and the Director of the International Trade Law Division in the Office of Legal Affairs of the United Nations, which functions as the substantive secretariat for UNCITRAL. She is the ninth Secretary of the Commission since it was established by the General Assembly in 1966.

Prior to her appointment on 24 November 2017, Ms. Joubin-Bret practiced law in Paris, specializing in International Investment Law and Investment Dispute Resolution. She focused on serving as counsel, arbitrator, mediator and conciliator in international investment disputes. She served as arbitrator in several ICSID, UNCITRAL and ICC disputes. Prior to 2011 and for 15 years, Ms. Joubin-Bret was the Senior Legal Adviser for the United Nations Conference on Trade and Development (UNCTAD). She edited and authored seminal research and publications on international investment law, notably the Sequels to UNCTAD IIA Series and co-edited with Jean Kalicki a book on Reform of Investor-State Dispute Settlement in 2015.

Ms. Joubin-Bret holds a post-graduate degree (DEA) in Private International Law from the University of Paris I, Panthéon-Sorbonne, a Masters Degree in International Economic Law from University Paris I and in Political Science from Institut d'Etudes Politiques. She was Legal Counsel in the legal department of the Schneider Group, General Counsel of the KIS Group and Director-Export of Pomagalski S.A. She was appointed judge at the Commercial Court in Grenoble (France) and was elected Regional Counsellor of the Rhône-Alpes Region in 1998.



Prof. Hi-Taek Shin

Arbitrator
Twenty Essex

Professor Hi-Taek Shin is an arbitrator at Twenty Essex, London/Singapore. Until recently, he served as the Chairman of KCAB INTERNATIONAL, the international division of the Korean Commercial Arbitration Board.

He has unique experience combining a successful career as a counsel, academic, and arbitrator, as well as in the public service. Until 2007, he had long been a partner of Kim & Chang, the leading Korean law firm. Since 2007, he taught international investment law and investor-State arbitration at Seoul National University School of Law until his retirement in 2017.

He has been appointed as a sole, presiding, and co-arbitrator in international commercial and investment arbitrations under the rules of major international arbitral institutions, including the ICSID Convention. He is on the panel of arbitrators of HKIAC, AAA/ICDR, ICSID, JCAA, KCAB, and SIAC, to name a few.

Recently, he co-authored the Korean chapter in *Balancing the Protection of Foreign Investors and State Responses in the Post-Pandemic World* (Y. Levashova and P. Lorfing, eds., Wolters Kluwer 2022) and "ICSID Administrative and Financial Regulations" in *ICSID Rules and Regulations 2022: Article-by-Article Commentary* (R. Happ and S. Wilske, C.H. Beck, 2022).



Meg Kinnear

Secretary-General
International Centre for Settlement of Investment Disputes (ICSID)
and Vice President, World Bank Group
Washington, DC

Meg Kinnear is the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) and a Vice President of the World Bank.

Prior to joining ICSID, she worked as Senior General Counsel (2006-2009) and Director General of the Trade Law Bureau of Canada (1999-2006). Prior to this, Ms. Kinnear was the Executive Assistant to the Deputy Minister of Justice of Canada (1996 -1999) and Counsel at the Civil Litigation Section of the Canadian Department of Justice (1984-1996).

Ms. Kinnear has frequently spoken on and published with respect to international investment law and procedure, including as a co-author of *Investment Disputes under NAFTA* (Kluwer Law Publications, June 2006; updated editions released January 2008 and June 2009).

Ms. Kinnear holds degrees from the University of Virginia (LL.M.) and McGill University (LL.B.). She is admitted to the Bar of the Law Society of Upper Canada (Ontario) and the District of Columbia Bar.

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MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

Session 1: Investment Mediation



MODERATOR

Prof. Jaemin Lee

Seoul National University School of Law

Jaemin Lee is currently Professor of Law at School of Law, Seoul National University in Seoul, Korea. His major areas of teaching and research are public international law, international economic law and international dispute settlement. He has published articles and books (including book chapters) on various topics of public international law, international economic law and dispute settlement. He served as President of the KOREAN SOCIETY OF INTERNATIONAL ECONOMIC LAW (2020-2021), and Vice President of the KOREAN SOCIETY OF INTERNATIONAL LAW (2021). He also served as Director of the ASIA PACIFIC LAW INSTITUTE of Seoul National University (2021-2023). He currently serves on the Executive Council of the SOCIETY OF INTERNATIONAL ECONOMIC LAW (2021~), and the Steering Committee of the ACADEMIC FORUM ON INVESTOR-STATE DISPUTE SETTLEMENT (2021~). He can be reached at 82-2-880-7572 (office) or via e-mail at jaemin@snu.ac.kr.

**SPEAKER****Jae Sung Lee**

Senior Legal Officer
United Nations Commission on International Trade Law
(UNCITRAL)

Mr. Jae Sung Lee is a legal officer at the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for UNCITRAL. He functions as the Secretary of Working Group II on Dispute Settlement and further services the Working Group III on Investor-State Dispute Settlement Reform. Before joining the United Nations in 2007, he served in the Korean Ministry of Foreign Affairs. A Korean national, Mr. Lee is a graduate of Seoul National University College of Law, holds LL.M. degrees from Seoul National University Graduate School of International Studies and NYU School of Law as well as a Ph.D in Law from Seoul National University.



SPEAKER

George Lim SC

Singapore International Mediation Centre
(SIMC)

George Lim was called to the Bar in Singapore in 1981, and has practised law for more than 40 years. He was appointed Senior Counsel by the Chief Justice in 2010, and was President of the Law Society of Singapore between 1998-1999. In January 2017, George was appointed Chairman of the Singapore International Mediation Centre (SIMC).

George has mediated more than 800 disputes, and has extensive experience in mediating cross-cultural, cross-border disputes in Singapore, Thailand, Taiwan, Maldives, South Korea, Australia and Fiji. George has also conducted mediation training for judges and lawyers in Singapore, Thailand, Philippines, Malaysia, Dubai, Bahrain, Maldives, Hong Kong, South Korea, Japan, India and Fiji.

George is on the panel of arbitrators of the Singapore International Arbitration Centre (SIAC). He is the Dispute Resolution Counsellor of the National Electricity Market of Singapore, and manages the dispute management process of the energy market.

Between 2009 – 2010, George served as the first chairman of the Asian Mediation Association. In 2013, he co-chaired a working group, appointed by Chief Justice Sundaresh Menon and the Ministry of Law, to make recommendations on developing Singapore into a centre for international commercial mediation.

George was Singapore's mediation consultant to UNCITRAL Working Group II, which led to the adoption of the Singapore Convention on Mediation in 2019. In October 2019, he was appointed to the Roster of Panel Chairs of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) on Dispute Settlement. In 2020, George was awarded the Public Service Star by the President of Singapore for his contributions to mediation.

George has mediated many cross-border disputes, including investor state disputes and claims against governments. In 2021, he successfully mediated a US\$1b dispute between Posco Energy and FuelCell Energy (reported in Global Arbitration Review, 6 Jan 22).

George has been named by The International Who's Who of Commercial Mediation as a global thought leader in mediation. He is the co-editor of Mediation in Singapore: A Practical Guide.

**SPEAKER****Dr. Zhijin (Donna) Huang**

Director
Arbitration and ADR, North Asia,
ICC Dispute Resolution Services

Dr. Donna Huang serves as the Director of Arbitration and ADR for North Asia at ICC Dispute Resolution Services. In her role, she leads the strategic development, business development, marketing, promotion, and training initiatives for ICC's dispute resolution services across 17 countries and regions in North Asia, including China, Hong Kong, Japan, South Korea, Taiwan, Pakistan, Bangladesh, Mongolia, Laos, and others.

Prior to joining the ICC, Dr. Huang was an Associate Professor at a Chinese university. She received prestigious nominations for the U.S. Fulbright Program on two occasions and was a recipient of the Erasmus Program from the European Union. Before assuming her position as the Director for North Asia, she had served as a legal expert at the ICC.

Dr. Huang has published numerous papers, commentaries, and articles in Mainland China, Hong Kong, and Europe. Additionally, she has delivered over a hundred speeches in both Chinese and English across various countries, including China, South Korea, Japan, Laos, Bangladesh, and Singapore.



SPEAKER

Jinyoung Seok

Legal Counsel
Permanent Court of Arbitration

Jinyoung Seok serves as Legal Counsel at the Permanent Court of Arbitration (PCA) in The Hague, an intergovernmental organization which administers arbitrations and other dispute resolution proceedings involving various combinations of States, State entities, intergovernmental organizations, and private parties.

At the PCA, Jinyoung works closely with arbitral tribunals constituted under the auspices of the PCA to resolve investment treaty disputes, contract claims involving State entities and international organizations, and inter-State disputes arising under various international conventions and treaties. In addition, she assists the PCA Secretary-General in carrying out his roles under the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL), and regularly assists in the diplomatic work of the PCA with its Member States and other intergovernmental organizations.

Jinyoung holds an LL.M. from King's College London, J.D. from University of Minnesota Law School, MSc International Public Policy from University College London, as well as a B.A. from New York University. She is qualified to practice law in Minnesota and New York.

**SPEAKER****Sae Youn KIM**

Partner, Kim & Chang, Seoul

Sae Youn Kim is a partner of the International Arbitration & Cross-Border Litigation Practice of Kim & Chang. Ms. Kim practices primarily in the areas of international litigation and arbitration with an emphasis on commercial and international law.

Before joining Kim & Chang, she served as a judge at various Korean district courts, and practiced as a key member in major Korean law firms. Ms. Kim also sits as an arbitrator. Her expertise in international dispute resolution has been recognized by the variety of roles she holds and held in various institutions, including but not limited to a Commissioner of the Korea Trade Commission, a Vice-Chair of the Arbitration Committee of the International Bar Association, a Co-Chair of the Dispute Resolution and Arbitration Committee of the Inter-Pacific Bar Association, and a Court member of the ICC International Court of Arbitration.



SPEAKER

Mike McClure KC

Partner, Herbert Smith Freehills

Mike is a King's Counsel solicitor advocate with expertise in arbitration, court and expert determination proceedings, and particular experience in the energy, construction, infrastructure and financial services sectors.

Mike advises clients on arbitrations under the auspices of several arbitral institutions, including the LCIA, ICC, HKIAC, SIAC, ICSID, LMAA, DIFC-LCIA, DIAC and BCDR.

He has also represented clients in ad hoc arbitrations under the English Arbitration Act and advised clients on English and DIFC First Instance and Court of Appeal proceedings.

Mike regularly contributes to the broader arbitration community in Korea, including sitting as an arbitrator at the Korean Commercial Arbitration Board (KCAB) and coaching Yonsei University students participating in the annual Vis Moot. In 2019, he received the Korea Arbitration Award from the Korean Ministry of Justice in recognition of his contributions.

He is consistently recognised as a leading individual for international arbitration by Chambers & Partners, Legal 500 and Who's Who Legal. According to Chambers Asia Pacific, Mike is "one of the best dispute resolution attorneys in this region," and that "he knows how to get the job done - a go-to person for high-stakes issues."

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ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

Session 2: The Codes of Conduct



MODERATOR

Prof. Hi-Taek Shin

Arbitrator
Twenty Essex

Professor Hi-Taek Shin is an arbitrator at Twenty Essex, London/Singapore. Until recently, he served as the Chairman of KCAB INTERNATIONAL, the international division of the Korean Commercial Arbitration Board.

He has unique experience combining a successful career as a counsel, academic, and arbitrator, as well as in the public service. Until 2007, he had long been a partner of Kim & Chang, the leading Korean law firm. Since 2007, he taught international investment law and investor-State arbitration at Seoul National University School of Law until his retirement in 2017.

He has been appointed as a sole, presiding, and co-arbitrator in international commercial and investment arbitrations under the rules of major international arbitral institutions, including the ICSID Convention. He is on the panel of arbitrators of HKIAC, AAA/ICDR, ICSID, JCAA, KCAB, and SIAC, to name a few.

Recently, he co-authored the Korean chapter in *Balancing the Protection of Foreign Investors and State Responses in the Post-Pandemic World* (Y. Levashova and P. Lorfing, eds., Wolters Kluwer 2022) and "ICSID Administrative and Financial Regulations" in *ICSID Rules and Regulations 2022: Article-by-Article Commentary* (R. Happ and S. Wilske, C.H. Beck, 2022).



SPEAKER

Anna Joubin-Bret

Secretary
United Nations Commission on International Trade Law
(UNCITRAL)

Ms. Anna Joubin-Bret is the Secretary of the United Nations Commission on International Trade Law (UNCITRAL) and the Director of the International Trade Law Division in the Office of Legal Affairs of the United Nations, which functions as the substantive secretariat for UNCITRAL. She is the ninth Secretary of the Commission since it was established by the General Assembly in 1966.

Prior to her appointment on 24 November 2017, Ms. Joubin-Bret practiced law in Paris, specializing in International Investment Law and Investment Dispute Resolution. She focused on serving as counsel, arbitrator, mediator and conciliator in international investment disputes. She served as arbitrator in several ICSID, UNCITRAL and ICC disputes. Prior to 2011 and for 15 years, Ms. Joubin-Bret was the Senior Legal Adviser for the United Nations Conference on Trade and Development (UNCTAD). She edited and authored seminal research and publications on international investment law, notably the Sequels to UNCTAD IIA Series and co-edited with Jean Kalicki a book on Reform of Investor-State Dispute Settlement in 2015.

Ms. Joubin-Bret holds a post-graduate degree (DEA) in Private International Law from the University of Paris I, Panthéon-Sorbonne, a Masters Degree in International Economic Law from University Paris I and in Political Science from Institut d'Etudes Politiques. She was Legal Counsel in the legal department of the Schneider Group, General Counsel of the KIS Group and Director-Export of Pomagalski S.A. She was appointed judge at the Commercial Court in Grenoble (France) and was elected Regional Counsellor of the Rhône-Alpes Region in 1998.



SPEAKER

Meg Kinnear

Secretary-General
International Centre for Settlement of Investment Disputes (ICSID)
and Vice President, World Bank Group
Washington, DC

Meg Kinnear is the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) and a Vice President of the World Bank.

Prior to joining ICSID, she worked as Senior General Counsel (2006-2009) and Director General of the Trade Law Bureau of Canada (1999-2006). Prior to this, Ms. Kinnear was the Executive Assistant to the Deputy Minister of Justice of Canada (1996 -1999) and Counsel at the Civil Litigation Section of the Canadian Department of Justice (1984-1996).

Ms. Kinnear has frequently spoken on and published with respect to international investment law and procedure, including as a co-author of *Investment Disputes under NAFTA* (Kluwer Law Publications, June 2006; updated editions released January 2008 and June 2009).

Ms. Kinnear holds degrees from the University of Virginia (LL.M.) and McGill University (LL.B.). She is admitted to the Bar of the Law Society of Upper Canada (Ontario) and the District of Columbia Bar.

**SPEAKER****Christopher Lau SC**

3 Verulam Buildings
Singapore, London

A Senior Counsel, Chartered Arbitrator and former Judicial Commissioner of the Singapore Supreme Court, Christopher Lau is recognised as “obviously one of the most experienced arbitrators in Singapore” (Chambers Global Guide 2019) and is ranked by Chambers & Partners as one of the Most In Demand Arbitrators in the Asia-Pacific Region. His arbitration practice encompasses investment as well as all aspects of commercial disputes including construction, corporate, energy, pharmaceuticals, maritime, aerospace, communications, insurance, military & defence procurements involving the laws of various common and civil law jurisdictions. Amounts in dispute in several arbitrations were in excess of USD 1 billion.

Christopher is a Vice President of the LCIA Court and a member of, among others, the ICC Commission on Arbitration and ADR, KCAB’s International Arbitration Committee, the Council of the Mumbai Centre for International Arbitration and the Global Advisory Board of the New York International Arbitration Centre.



SPEAKER

Eric Ng

Deputy Secretary General
HongKong International Arbitration Centre(HKIAC)

Prior to joining the HKIAC, Eric worked for several years as a barrister-at-law in Hong Kong focusing primarily on international commercial and construction arbitrations, as well as general commercial litigation in Hong Kong, and has worked as counsel as well as tribunal secretary for several major international commercial, construction, and financial arbitrations around the world.

In addition to his work as a barrister, Eric was previously Adjunct Professor at the University of International Business and Economics in Beijing, lecturing in advocacy and investor-state arbitration. He has also lectured at Tsinghua University and Peking University. Eric has also published on issues of international dispute resolution and investor-state arbitration.

Eric holds a BCL from Oxford University, PCLL and JD from City University from Hong Kong, MSc E-commerce from the University of Hong Kong, as well as a BS in Business Administration and Information Systems from Babson College in the USA. He is admitted to practice law in Hong Kong.

**SPEAKER****Yun Jae Baek**

Partner, Yulchon LLC

Yun Jae Baek is working as the co-head of the International Dispute Resolution Team at Yulchon. Mr. Baek, who is qualified to practice law in both Korea and New York, is widely recognized as one of Korea's leading attorneys, particularly in the fields of international arbitration, M&A, and international trade. With over 30 years of dedicated experience, he has amassed a wealth of expertise in these areas. Currently, Mr. Baek holds the role of arbitrator with several prominent arbitral institutions, including the ICC, KCAB, AIAC, and others. His reputation has allowed him to be selected as a leading lawyer by renowned publications such as Chambers Global, Who's Who Legal, and Benchmark Litigation. He got his LLB from Seoul National University Law School and his LLM from Harvard Law School.



SPEAKER

Prof. Joongi Kim

Yonsei University School of Law

Joongi Kim is a Professor of Law at Yonsei Law School and the President of the Korean Council for International Arbitration (KOCIA). Joongi has acted as a presiding arbitrator, sole arbitrator, and co-arbitrator in institutional and ad hoc proceedings under the rules of the GGGI, HKIAC, ICC, ICSID, JCAA, KCAB, LMAA, QICCA, SIAC, UNCITRAL, and VIAC. In 2019, he was selected as International Arbitrator of the Year by KCAB International and the Korea Economic Daily and received the Top 10 Arbitrators in Asia Pacific Award by the Bali International Arbitration and Mediation Center. A Member of the ICC Court, he also serves on the panel of arbitrators for the ICSID, Korea-EU Free Trade Agreement, Korea-US Free Trade Agreement and GGGI, in addition to AIAC, CAA, CAfA, CIETAC, CRCICA, DIAC, eBRAM, HIAC, HZAC, HKIAC, JCAA, KCAB, PIAC, RIMA, SCCA, SCIA, SHIAC, SIAC, and VIAC, and the panel of mediators of HIAC International Mediation Center, SIMC, and VMC. He serves as a Council Member for the ICC Institute of World Business and an Academic Council Member of the Institute of Transnational Arbitration. He also sits on the editorial board of International Investment Law and Arbitration (Brill), Asian Journal of Comparative Law (Cambridge University Press), Dispute Resolution International (IBA) and Korean Arbitration Review. His research focuses on international arbitration, international trade and investment, corporate governance and good governance. His treatise INTERNATIONAL ARBITRATION IN KOREA (OUP) received the 11th Simdang International Trade and Business Research Award. He has been a visiting professor at ESADE, Georgetown, Keio, the National University of Singapore, National Law School of India University (Bangalore), University of Florida and University of Hong Kong.

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MINISTRY OF JUSTICE, REPUBLIC OF KOREA
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Session 3:
Advisory Centre on
International Investment Law



MODERATOR

Prof. Seung Wha CHANG

Seoul National University School of Law

Seung Wha CHANG is Professor of Law and the former Dean of Seoul National University (SNU) School of Law where he teaches international trade and investment law as well as international arbitration. Recently, Professor Chang completed his tenure as the Chairman of the Korea Trade Commission.

In 2016, Prof. Chang completed his four-year term for the World Trade Organization (WTO) as a Member(Judge) of the Appellate Body. Prior to this, he was one of the most frequently appointed panelists for the WTO dispute settlement panels. Prof. Chang also has served as an international arbitrator (chairman or co-arbitrator) in numerous occasions for various arbitral institutions, including the ICC, LCIA, SIAC, HKIAC and KCAB, and he previously served as a Member of the ICC International Court of Arbitration. In earlier days of his legal career, Prof. Chang served as a Seoul District Court judge, and also practiced as a foreign attorney at Covington & Burling in Washington D.C.

Prof. Chang graduated from SNU School of Law and holds master (LL.M.) and doctorate (S.J.D.) degrees from Harvard Law School. He has taught international economic law and international arbitration courses as a Visiting Professor at various renowned law schools, including Harvard, Yale, Stanford, NYU, Duke, Georgetown, UCLA, National University of Singapore, Hong Kong University, and Geneva University. In 2007, Harvard Law School granted him an endowed visiting professorial chair title, Nomura Visiting Professor of International Financial Systems.

Prof. Chang is the first Korean author who published a book on bilateral investment treaties and Editor-in-Chief of Korean Arbitration Review. In addition, he presently serves as an Advisory Board Member for leading international law journals, including the Journal of International Economic Law (Oxford) and the Journal of International Dispute Settlement (Oxford).

Prof. Chang is a South Korean national, and is married with twin children.



SPEAKER

Young Shin Um

Senior Deputy Director
Ministry of Justice, Republic of Korea

Ms. Young Shin Um is a Senior Deputy Director at the International Dispute Settlement Division, Ministry of Justice, Republic of Korea, where she manages investor – state disputes and participates in multilateral ISDS reform projects including the UNCITRAL Working Group III. Ms. Um was educated in both the civil and common law traditions, having studied first at Seoul National University (LL.B., 2007 and J.D., 2012) and at New York University School of Law (LL.M. in International Legal Studies, 2008 and LL.M. in International Business Regulation, Litigation and Arbitration, 2019). As a dual qualified attorney (Korean and New York State Bars), Ms. Um practiced international arbitration in major Korean law firms prior to joining the Korean government.



SPEAKER

Yudai Ueno

Director
Ministry of Foreign Affairs, Japan

EXPERIENCE

2002	Official, Treaties Division, Ministry of Foreign Affairs (MOFA)
2004	Official, Economic Treaties Division, MOFA
2005	Second Secretary, Embassy of Japan in Washington DC, USA
2008	First Secretary, Mission of Japan to the European Union
2011	Deputy Director, Status of U.S. Forces Agreement Division, MOFA
2013	First Secretary, Embassy of Japan in the Philippines
2016	Counsellor, Embassy of Japan in the Republic of Korea
2020	Senior Coordinator, Economic Partnership Division, MOFA
2021	Director, Investment Policy Division, MOFA
2023	Director, Southeast Asia/Economic Partnership Agreements Division, MOFA



SPEAKER

Ernesto Simanungkalit

Deputy Director
Ministry of Foreign Affairs, Indonesia

Ernesto started his career in the Ministry of Foreign Affairs of Indonesia in 2007. He was Head of Section for ASEAN Human Rights Affairs in 2009. He played an active role in the establishment of the ASEAN Human Rights Body (AICHR), the conclusion of ASEAN Charter's implementing treaties, and the Indonesia-ASEAN Host Country Agreement. He experienced Indonesia's ASEAN chairmanship in 2011 and helped achieve monumental progress towards the creation of a rules-based ASEAN.

Later in his career, Ernesto was closely exposed to the world of economic diplomacy. His position in the economic function in both of his previous assignments abroad has built him a reputation. In his first post in Brussels (2012-2015), Ernesto's achievement includes delisting Indonesia from the EU IUU List, and the EU Air Safety List, the scoping of Indonesia-EU CEPA, and particularly the fight against the EU attacks towards Indonesia's palm oil. While he was posted in Berlin (2018-2022), he continues campaigning on Indonesia's sustainable economy, pursuing Indonesia's economic interests in the EU CEPA negotiation, and promoting Indonesia-Germany cooperation in the health sector.

Currently, Ernesto is a Diplomat Madya with the rank of Counsellor. He is the Coordinator for Trade and Investment Law and Treaties in the Directorate General of Legal and Treaty Affairs. He negotiated the Indonesia-Australia CEPA, Indonesia-United Arab Emirates CEPA, the Regional Comprehensive Economic Partnership Agreement, ASEAN Hong Kong FTA, Indonesia-UAE BIT. He is currently negotiating the Indonesia-EU CEPA, Indonesia-Canada CEPA, ASEAN-Canada CEPA, Review of ASEAN-China FTA, Review of AANZFTA, and the ISDS Reform in the UNCITRAL.

Ernesto's academic background is law. Recently, he paid close attention to the study of economics. He pursued this ambition by graduating from Freie Universität Berlin, focusing on competition policy and international trade law. He has published several articles in various domestic newspapers, and academic journals. He recently continues expanding his academic passion by, teaching various aspects of international law in Universitas Bina Nusantara, Indonesia.



SPEAKER

Adeel Mumtaz Khokhar

Director
Ministry of Foreign Affairs, Pakistan

Adeel Mumtaz Khokhar is a Pakistani diplomat currently holding the position of Director (UN) at the Ministry of Foreign Affairs in Islamabad. He has a Bachelor's degree in Civil Engineering from NED University of Engineering and Technology in Karachi, an LLB from the University of London, and an LLM in Public International Law from the University of Law in London. Adeel is proficient in English, French, and Urdu.

In his current role as Director (United Nations-I), he oversees various aspects of international affairs, including matters related to peace and security, political issues in the United Nations General Assembly and the Security Council. He also manages the 4th and 6th committees of the UN, UNCITRAL, and handles numerous UN bodies and agencies. Previously, he served as the Head of the Consular Section at the Embassy of Pakistan in Paris, where he handled visa endorsements, passport processing, and collaborated with local authorities to represent the interests of Pakistani nationals in France. Notably, Adeel represented Pakistan at the Financial Action Task Force (FATF) – OECD.

Adeel's professional experience also includes serving as Assistant Chief of Protocol at the Ministry of Foreign Affairs, Camp Office Karachi, where he managed diplomatic missions and protocol for foreign dignitaries. Moreover, he has contributed to academia by teaching International law and international relations to students pursuing their Masters at the University of Karachi.

**SPEAKER****Sun Thathong**

Counsellor
Ministry of Foreign Affairs, Thailand

Sun Thathong is a Thai international lawyer-diplomat, currently serving as a Counsellor at the International Law Development Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs of Thailand. He holds an LL.M and a Ph.D in International Law from the University of Cambridge. He is the winner of the University of Cambridge's 2009 Clive Parry Prize for International Law and the joint runner-up winner of the Asian Society of International Law's 2017 Asian-JIL Young Scholar Prize. He is also a research assistant to Dr. Vilawan Mangklatanakul, member of the International Law Commission (2023-present).

At the Ministry of Foreign Affairs, Sun previously served at the Treaty Division (2009-2011), the International Law Development Division (2015-2018), the Royal Thai Embassy and Permanent Mission of Thailand in Vienna (2018-2022), and the International Law Research and Information Unit (2022). During 2015-2018, he was a lead negotiator for Thailand in several rounds of negotiations of the Regional Comprehensive Economic Partnership Agreement's legal and institutional provisions. He was also a Thai delegate to the Sixth Committee of the UN General Assembly's 72nd session (2017) and has attended several sessions of UNCITRAL Working Group III (ISDS Reform) since 2018.

Sun's current responsibilities at the Department of Treaties and Legal Affairs include matters relating to general public international law, law of treaties, law of the WTO, intellectual property law, negotiations of free trade agreements, settlement of international disputes, and international investment law.

MEMO

The background features a series of concentric circles in a light blue-grey color. Scattered around these circles are small dots of varying shades of blue and grey. Some dots are connected to the circles by thin, curved lines, creating a sense of movement or a network.

ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

Session 4: Dispute Prevention and Mitigation



MODERATOR

Shane Spelliscy

Chairperson
UNCITRAL Working Group III

Shane Spelliscy is currently the Director General of the Trade Law Bureau of the Government of Canada and the Deputy Legal Adviser at Global Affairs Canada. As the Director General, he is the Government of Canada's most senior international trade lawyer, responsible for all trade related legal advice, including trade remedies, market access, trade barriers, trade in goods and services and international investment law. He joined the Trade Law Bureau in 2008, and since then he has provided advice on Canada's obligations under its trade and investment treaties and served as counsel in trade and investment treaty negotiations and in disputes under its investment treaties. He has acted as Canada's delegate at UNCITRAL since 2008, including with respect to the revision of the UNCITRAL Arbitration Rules, the development of the UNCITRAL Rules on Transparency, and the negotiation of the Mauritius Convention on Transparency in Treaty-Based Investor-State Dispute Settlement. In November 2017, he was elected by the Member States of UNCITRAL as the Chair of Working Group III, which has been tasked with considering possible reforms in the field Investor-State dispute settlement.



SPEAKER

Donghwan Shin

Director/Senior Prosecutor
Ministry of Justice, Republic of Korea

Director Donghwan Shin is a senior prosecutor and currently serves as the Director of International Legal Advisory Division at the Ministry of Justice, Republic of Korea. He has led numerous ISDS cases on behalf of the Korean government and has provided legal advice on related investment treaties, remedies, disputes as well as litigations. He has acted as Korea's delegate at UNCITRAL ISDS reform discussions since 2017 and also participated in the ICSID rules reform work. Mr. Shin holds master's degree from Columbia Law School and is a dual qualified government attorney admitted to practice in Korea and New York.



SPEAKER

Zhang Shuang

Official
Ministry of Commerce, China

Ms. Zhang Shuang is an official working for the Investment Law Division, Department of Treaty and Law, Ministry of Commerce, China. Areas of her working interest include IIA negotiations and ISDS proceedings. Before that she was a diplomat working for the Mission of China to WTO and the Embassy of China in India, focusing on TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) issues and China-India bilateral investment, respectively. Ms. Zhang holds a master's degree of law from Peking University, China.



SPEAKER

Siddharth Malik

Director
Ministry of External Affairs, India

I am a career Diplomat with about twelve years experience in the government sector. My career in public service started at Ministry of External Affairs, Government of India in 2010.

EXPERIENCE

December, 2022-Present Director, Economic Diplomacy Division

- The Division is the Economic Arm of MEA, the work entails coordination with Indian Missions and various Ministries of Government of India, to enable foreign investment flows and promote bilateral trade, tourism.
- I also handle work related to healthcare, energy security and food security.
- The Division is the nodal point for work related to International Solar Alliance, Coalition for Disaster Resilient Infrastructure and I2U2 Summit.

August 2021 – November, 2022 Chief of Staff of the Minister of State for External Affairs, Mrs Meenakshi Lekhi

- Attending meetings on behalf of Minister and reporting back with relevant information.
- Drafting correspondence, speeches and official statements.
- Provide insight and feedback to Minister to assist with the decision making process.
- Scheduling and prioritizing appointments for Minister.
- Overseeing staff and handling their problems.

July 2019-August 2021 First Secretary, Permanent Mission of India to United Nations at New York

- Contributed to promoting and protecting India's core interests at the UN.
- Gave special focus to protect India's long term developmental interest in implementation of Sustainable Development Goals and the 2030 Agenda.
- Ensuring a policy space which is necessary for India's continued and sustained economic growth.
- Promoted India's interest with respect to climate change and related discussions at the UN.
- Facilitated effective engagement of various Government of India Ministries in various UN meetings/conferences.
- Negotiated resolutions and statements on behalf of India at UN General Assembly and UN Security Council.

July 2017 – August 2019 East Asia Division, Ministry of External Affairs

- Worked at East Asia Division of Ministry of External Affairs

September 2012- July 2017 Second Secretary, Embassy of India, Beijing

- Promoting India culture in China by organizing yoga events, classical dance classes and promotion of Indian movies.
- Handling India-China bilateral political relations.
- Focusing on China's external foreign policy.
- Maintaining contacts with think tanks and other important government institutes in China.
- Travelling within China to carry out diplomatic work.

December 2010- August 2012 Officer Trainee, Foreign Service Institute, Delhi



SPEAKER

Natalie Morris Sharma

Director
Attorney-General's Chambers, Singapore

Ms Morris-Sharma is a Director and Deputy Senior State Counsel in the international law department of Singapore's Attorney-General's Chambers. In that capacity, she advises and represents the Government on international law issues, including leading the teams on international environment law, health law, human rights law, diplomatic law and the law on privileges and immunities, as well as the law of international organisations. She also works on issues of international economic law and oceans and the law of the sea.

Prior to her current role, she had undertaken other capacities, including as Director of the International Legal Division of Singapore's Ministry of Law, and as Legal Advisor to Singapore's Permanent Mission to the United Nations.

Ms Morris-Sharma has participated in and led several bilateral and multilateral negotiations, including for bilateral and regional trade and investment agreements, as well as for the United Nations Commission on International Trade Law (UNCITRAL) Rules on Transparency in Treaty-based Investor-State Arbitration. She has also served as head of delegation to meetings of the Hague Conference and the Association of Southeast Asian Nations (ASEAN). Ms Morris-Sharma is currently Rapporteur to UNCITRAL Working Group III on Investor-State Dispute Settlement (ISDS) Reform. She has previously performed other roles at UNCITRAL, including as Chairperson of Working Group II (Dispute Settlement) for its work on the enforcement of mediated settlement agreements, including the development of the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation; and as Vice-Chairperson of the 50th UNCITRAL Commission session, where she led the meeting on the adoption of the mandate for ISDS Reform.

Ms Morris-Sharma has published on topics relating to international trade and investment law, law of the sea, the work of the International Law Commission, and treaty law. She has taught at the ASEAN Law Academy, organised by the National University of Singapore's Centre for International Law; and the International Tribunal for the Law of the Sea (ITLOS)-Nippon Foundation Programme. She serves as a counsellor of the American Society of International Law.

Ms Morris-Sharma is admitted to the bar in Singapore and in New York, and is a recipient of the Singapore Public Administration Medal (Bronze).



SPEAKER

LAI Thi Van Anh

Deputy Director General
Ministry of Justice, Viet Nam

For more than 20 years working at the Ministry of Justice of Viet Nam, Lai Thi Van Anh has been directly involved in drafting and scrutinizing legislations governing investment, trade and commerce, and participated in the negotiation of numerous international treaties particularly the CPTPP, Viet Nam - EU Free Trade Agreement, and Viet Nam - EU Investment Protection Agreement.

Mrs. Lai currently leads a specialized team in the Ministry of Justice to represent the Government and Government Agencies in Investor - State disputes and represents Viet Nam in Working Group II on Dispute Settlement and Working Group III on ISDS Reforms of the United Nations Commission on International Trade Law.



SPEAKER

Priyanka Kher

Senior Private Sector Specialist, The World Bank

Priyanka is a Senior Private Sector Specialist in the Investment Climate Unit of the World Bank Group. She leads policy advisory and research projects in developing countries in Asia and Africa on investment climate reforms. She is a member of the investment policy and promotion team and leads the team's work on investment retention and expansion. Prior to joining the World Bank Group, she practiced law at law firms in India and Singapore and worked with UNCTAD and the Commonwealth Secretariat on investment policy, international trade and investment law. She holds a master's degree from Harvard Law School and is a dual qualified attorney admitted to practice in New York and India.



ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

Session 1: Investment Mediation

UNCITRAL Model Provisions on Mediation for International Investment Disputes

Provision 1

Availability and commencement of mediation

1. “Mediation” means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (the “mediator”) lacking the authority to impose a solution upon the parties to the dispute.
2. The parties should consider mediation to settle an international investment dispute amicably.
3. The parties may agree to engage in mediation at any time, including after the commencement of any other dispute resolution proceeding.
4. A party may invite the other party in writing to engage in mediation in accordance with provision 2 (the “invitation”).
5. The other party should make all reasonable efforts to accept or reject the invitation in writing within 30 days of receipt of the invitation. If the inviting party does not receive an acceptance within 60 days of receipt of the invitation, that party may elect to treat it as a rejection of the invitation.
6. The parties shall agree to conduct the mediation in accordance with these Provisions and:
 - (a) The United Nations Commission on International Trade Law (UNCITRAL) Mediation Rules;
 - (b) The International Centre for Settlement of Investment Disputes (ICSID) Mediation Rules;
 - (c) The International Bar Association (IBA) Rules for Investor-State Mediation; or
 - (d) Any other rules.
7. Unless provided otherwise in the rules agreed by the parties pursuant to paragraph 6:
 - (a) The mediation shall be deemed to have commenced on the day on which the other party accepts the invitation;
 - (b) The parties shall appoint a mediator within 30 days of the commencement of the mediation. If a mediator is not appointed within that period of time, the parties shall agree on an institution or a person that shall assist them in appointing a mediator; and
 - (c) The mediator shall convene a meeting with the parties within 15 days after the appointment, and the parties shall attend that meeting.
8. The parties may at any time agree to exclude or vary any of these Provisions.
9. Where any of these Provisions is in conflict with a provision of the law applicable to the mediation from which the parties cannot derogate, including any applicable instrument or court order, that provision of the law shall prevail.

Provision 2**Information required in an invitation**

The invitation to engage in mediation referred to in provision 1, paragraph 4, shall contain at least the following information:

- (a) The name and contact details of the inviting party and its legal representative and, if the invitation is made by a legal person, the place of its incorporation;
- (b) Government agencies and entities that have been involved in the matters giving rise to the invitation;
- (c) A description of the basis of the dispute sufficient to identify the matters giving rise to the invitation; and
- (d) A description of any prior steps taken to resolve the dispute, including information on any pending claim.

Provision 3**Relationship with arbitration and other proceedings to resolve the dispute**

1. Upon the commencement of the mediation, a party shall not initiate or continue any other proceeding to resolve the dispute until the mediation is terminated.
2. If the mediation commences while another proceeding to resolve the dispute is in progress, the parties shall request the suspension of that proceeding pursuant to the rules applicable to that proceeding.

Provision 4**Use of information in other proceedings**

A party shall not rely in other proceedings on any positions taken, admissions or offers of settlement made or views expressed by the other party or the mediator during the mediation.

Provision 5**Settlement agreement**

The parties should consider whether the settlement agreement resulting from mediation meets the requirements set forth in the United Nations Convention on International Settlement Agreements Resulting from Mediation.

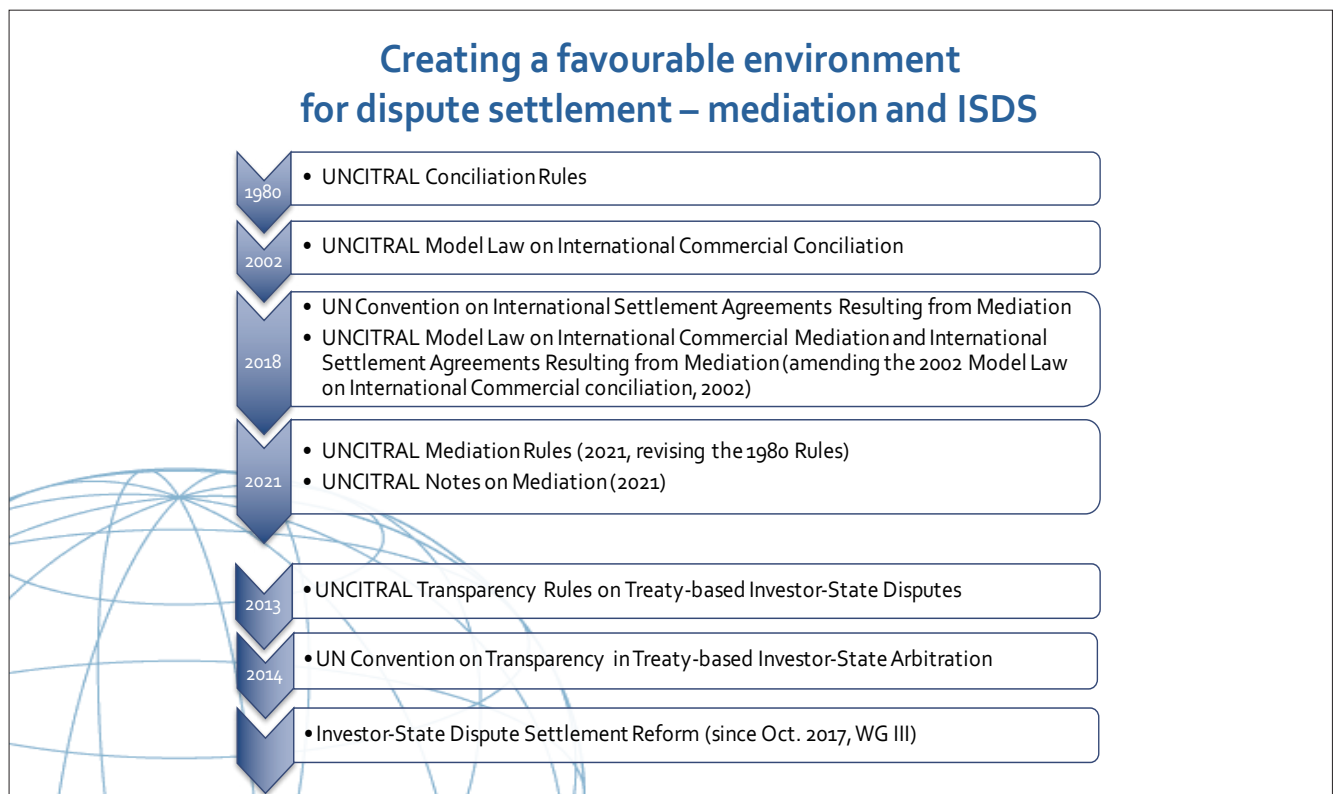
UNCITRAL
United Nations Commission on International Trade Law



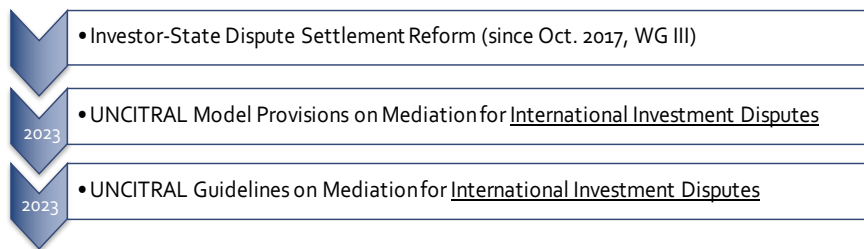
ADR Special Session – ISDS Reform

Mediation for International Investment Disputes

Jae Sung LEE
Secretary of Working Group III
Senior Legal Officer, International Trade Law Division
Office of Legal Affairs, United Nations



Creating a favourable environment for dispute settlement – mediation and ISDS



Model Provisions

For States and other relevant stakeholders involved in the negotiation of international investment instruments to include into respective instruments

Guidelines

For States, investors, mediators, interested institutions and other relevant stakeholders to foster a better understanding of mediation with regard to resolution of international investment disputes

Provision 1: Availability and commencement of mediation

Core principles of mediation

- Voluntary, consensual, flexible
- Useful without imposing an obligation

How to trigger mediation

- Invitation
- 30 days for opposing party to respond
- 15 days after appointment for mediator to convene a meeting

Existing frameworks for mediation

- UNCITRAL Mediation Rules
- ICSID Mediation Rules
- IBA Rules for Investor-State Mediation

Provision 2: Information required in an invitation

- Name and contact details of inviting party
- Parties that have been previously involved
- Description of the basis of dispute
- Description of prior steps taken

Provision 3: Relationship with arbitration and other proceedings

- Parties should not initiate or continue other proceedings to resolve the dispute unless this mediation is terminated
- If mediation commences while another proceeding is happening, parties should request suspension





Provision 4: Use of information in other proceedings

- Without prejudice

Provision 5: Settlement agreement

- Reminder of requirements set forth in the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018)

UNCITRAL Guidelines on Mediation for International Investment Disputes

	Tool for participants and interested stakeholders in investment mediation that addresses main phases of mediation
	Outlines main issues that participants may wish to consider when undertaking a mediation to solve an international investment dispute
	Not intended to promote best practices, but to describe issues that should be considered when undertaking investment mediation
	For parties to use or refer to however they see fit; does not impose any legal requirements

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Investor-State Dispute Settlement

In 2013, UNCITRAL amended the Arbitration Rules to incorporate the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, application of which is promoted by United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) or the Mauritius Convention on Transparency. In 2017, the Mauritius Convention on Transparency entered into force. The Convention provides an efficient mechanism to supplement existing investment treaties (concluded prior to April 2014) with respect to transparency related obligations.

At its fiftieth session in 2017, the Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS). Instruments resulting from that work, as adopted by the Commission, are presented on this page.

Conventions

- United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) (the "Mauritius Convention on Transparency")

Model Provisions

- UNCITRAL Model Provisions on Mediation for International Investment Disputes (2023)

Codes of conduct

- UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution (2023)
- UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution (adopted in principle in 2023)
- UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution and commentary (2023) (advance copy in English only)
- UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution and commentary (Adopted in principle in 2023) (advance copy in English only)

Contractual texts

- UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (effective date: 1 April 2014)
- UNCITRAL Arbitration Rules

Explanatory texts

- UNCITRAL Guidelines on Mediation for International Investment Disputes (2023)

Additional Resources

- Working Groups
 - Working Group II: Arbitration and Conciliation / Dispute Settlement
 - Working Group III: Investor-State Dispute Settlement Reform

Thank You!

**For more information on the work of
UNCITRAL, please visit our web site
<http://uncitral.un.org>**

E-mail: jaesung.lee@un.org





ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

Session 2: The Codes of Conduct

UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution

Article 1 Definitions

For the purposes of the Code:

(a) “International investment dispute (IID)” means a dispute between an investor and a State or a regional economic integration organization or any constituent subdivision of a State or agency of a State or a regional economic integration organization submitted for resolution pursuant to an instrument of consent;

(b) “Instrument of consent” means:

- (i) A treaty providing for the protection of investments or investors;
- (ii) Legislation governing foreign investments; or
- (iii) An investment contract between a foreign investor and a State or a regional economic integration organization or any constituent subdivision of a State or agency of a State or a regional economic integration organization,

upon which the consent to arbitrate is based;

(c) “Arbitrator” means a person who is a member of an arbitral tribunal or an International Centre for Settlement of Investment Disputes (ICSID) ad hoc Committee, who is appointed to resolve an IID;

(d) “Candidate” means a person who has been contacted regarding a potential appointment as an Arbitrator, but who has not yet been appointed;

(e) “Ex parte communication” means any communication concerning the IID by a Candidate or an Arbitrator with a disputing party, its legal representative, affiliate, subsidiary or other related person, without the presence or knowledge of the other disputing party or its legal representative;

(f) “Applicable rules” means the applicable arbitration rules and any law applicable to the IID proceeding; and

(g) “Assistant” means a person who is working under the direction and control of an Arbitrator to assist with case-specific tasks.

Article 2**Application of the Code**

1. The Code applies to an Arbitrator in, or a Candidate for, an IID proceeding, or a former Arbitrator. The Code may be applied in any other dispute resolution proceeding by agreement of the disputing parties.
2. If the instrument of consent contains provisions on the conduct of an Arbitrator, a Candidate or a former Arbitrator, the Code shall complement such provisions. In the event of any incompatibility between the Code and such provisions, the latter shall prevail to the extent of the incompatibility.

Article 3**Independence and impartiality**

1. An Arbitrator shall be independent and impartial.
2. Paragraph 1 includes the obligation not to:
 - (a) Be influenced by loyalty to any disputing party or any other person or entity;
 - (b) Take instruction from any organization, government or individual regarding any matter addressed in the IID proceeding;
 - (c) Be influenced by any past, present or prospective financial, business, professional or personal relationship;
 - (d) Use his or her position to advance any financial or personal interest he or she has in any disputing party or in the outcome of the IID proceeding;
 - (e) Assume any function or accept any benefit that would interfere with the performance of his or her duties; or
 - (f) Take any action that creates the appearance of a lack of independence or impartiality.

Article 4**Limit on multiple roles**

1. Unless the disputing parties agree otherwise, an Arbitrator shall not act concurrently as a legal representative or an expert witness in any other proceeding involving:
 - (a) The same measure(s);
 - (b) The same or related party (parties); or
 - (c) The same provision(s) of the same instrument of consent.

2. For a period of three years, a former Arbitrator shall not act as a legal representative or an expert witness in any other IID or related proceeding involving the same measure(s) unless the disputing parties agree otherwise.

3. For a period of three years, a former Arbitrator shall not act as a legal representative or an expert witness in any other IID or related proceeding involving the same or related party (parties) unless the disputing parties agree otherwise.

4. For a period of one year, a former Arbitrator shall not act as a legal representative or an expert witness in any other IID or related proceeding involving the same provision(s) of the same instrument of consent unless the disputing parties agree otherwise.

Article 5 **Duty of diligence**

An Arbitrator shall:

- (a) Perform his or her duties diligently;
- (b) Devote sufficient time to the IID proceeding; and
- (c) Render all decisions in a timely manner.

Article 6 **Integrity and competence**

An Arbitrator shall:

- (a) Conduct the IID proceeding competently and in accordance with high standards of integrity, fairness and civility;
- (b) Possess the necessary competence and skills and make all reasonable efforts to maintain and enhance the knowledge, skills and qualities necessary to perform his or her duties; and
- (c) Not delegate his or her decision-making function.

Article 7 **Ex parte communication**

- 1. Unless permitted by the instrument of consent, the applicable rules, agreement of the disputing parties or paragraph 2, ex parte communication is prohibited.
- 2. Ex parte communication is permitted when a Candidate engages in a communication with a disputing party that has

contacted him or her regarding a potential appointment as a party-appointed Arbitrator for the purpose of determining the Candidate's expertise, experience, competence, skills, availability and the existence of any potential conflict of interest.

3. When permitted under this article, ex parte communication shall not, in any case, address any procedural or substantive issues relating to the IID proceeding or those that a Candidate or an Arbitrator can reasonably anticipate would arise in the IID proceeding.

Article 8 Confidentiality

1. Unless permitted by the instrument of consent, the applicable rules or agreement of the disputing parties, a Candidate, an Arbitrator or a former Arbitrator shall not:

(a) Disclose or use any information concerning, or acquired in connection with, the IID proceeding; or

(b) Disclose any draft decision in the IID proceeding.

2. An Arbitrator or a former Arbitrator shall not disclose the contents of the deliberations in the IID proceeding.

3. An Arbitrator or a former Arbitrator may comment on a decision rendered in the IID proceeding only if it was made publicly available in accordance with the instrument of consent or the applicable rules.

4. Notwithstanding paragraph 3, an Arbitrator or a former Arbitrator shall not comment on a decision while the IID proceeding is pending or the decision is subject to a post-award remedy or review.

5. The obligations in this article shall not apply to the extent that a Candidate, an Arbitrator or a former Arbitrator is legally compelled to disclose the information in a court or other competent body or needs to disclose such information to protect or pursue his or her legal rights or in relation to legal proceedings before a court or other competent body.

Article 9 Fees and expenses

1. Fees and expenses of an Arbitrator shall be reasonable and in accordance with the instrument of consent or the applicable rules.

2. Any discussion concerning fees and expenses shall be

concluded with the disputing parties as soon as possible.

3. Any proposal concerning fees and expenses shall be communicated to the disputing parties through the institution administering the proceeding. If there is no administering institution, such proposal shall be communicated to the disputing parties by the sole or presiding Arbitrator.

4. An Arbitrator shall keep an accurate record of his or her time and expenses attributable to the IID proceeding and shall make such records available when requesting the disbursement of funds or upon the request of a disputing party.

Article 10 Assistant

1 Prior to engaging an Assistant, an Arbitrator shall agree with the disputing parties on the role, scope of duties and fees and expenses of his or her Assistant.

2. An Arbitrator shall make all reasonable efforts to ensure that his or her Assistant is aware of and acts in accordance with the Code, including by requiring the Assistant to sign a declaration to that effect, and shall remove an Assistant who does not act in accordance with the Code.

3. An Arbitrator shall ensure that the Assistant keeps an accurate record of his or her time and expenses attributable to the IID proceeding.

Article 11 Disclosure obligations

1 A Candidate and an Arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality.

2. Regardless of whether required under paragraph 1, the following information shall be disclosed:

(a) Any financial, business, professional or close personal relationship in the past five years with:

- (i) Any disputing party;
- (ii) The legal representative of a disputing party in the IID proceeding;
- (iii) Other Arbitrators and expert witnesses in the IID proceeding; and

- (iv) Any person or entity identified by a disputing party as being related or as having a direct or indirect interest in the outcome of the IID proceeding, including a third-party funder;
 - (b) Any financial or personal interest in:
 - (i) The outcome of the IID proceeding;
 - (ii) Any other proceeding involving the same measure(s); and
 - (iii) Any other proceeding involving a disputing party or a person or entity identified by a disputing party as being related;
 - (c) All IID and related proceedings in which the Candidate or the Arbitrator is currently or has been involved in the past five years as an Arbitrator, a legal representative or an expert witness;
 - (d) Any appointment as an Arbitrator, a legal representative or an expert witness by a disputing party or its legal representative in an IID or any other proceeding in the past five years; and
 - (e) Any prospective concurrent appointment as a legal representative or an expert witness in any other IID or related proceeding.
3. An Arbitrator shall have a continuing duty to make further disclosures based on new or newly discovered circumstances and information as soon as he or she becomes aware of such circumstances and information.
 4. For the purposes of paragraphs 1 to 3, a Candidate and an Arbitrator shall make all reasonable efforts to become aware of such circumstances and information.
 5. A Candidate and an Arbitrator shall err in favour of disclosure if he or she has any doubt as to whether a disclosure shall be made.
 6. If a Candidate or an Arbitrator is bound by confidentiality obligations and cannot disclose all of the required circumstances or information in this article, he or she shall make the disclosure to the extent possible. If a Candidate or an Arbitrator is unable to disclose circumstances that are likely to give rise to justifiable doubts as to his or her independence or impartiality, he or she shall not accept the appointment or shall resign or recuse himself or herself from the IID proceeding.
 7. A Candidate and an Arbitrator shall make the disclosure prior to or upon appointment to the disputing parties, other

Arbitrators in the IID proceeding, any administering institution and any other persons prescribed by the instrument of consent or the applicable rules.

8. The fact of non-disclosure does not in itself necessarily establish a lack of independence or impartiality.

Article 12

Compliance with the Code

1. An Arbitrator, a former Arbitrator and a Candidate shall comply with the Code.
2. A Candidate shall not accept an appointment and an Arbitrator shall resign or recuse himself or herself from the IID proceeding if he or she is not able to comply with the Code.
3. Any challenge or disqualification of an Arbitrator or any other sanction or remedy is governed by the instrument of consent or the applicable rules.

Annexes

Annex 1 (Candidates/Arbitrators)

Declaration, disclosure and background information

1. I have read and understood the attached UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution (the “Code of Conduct”) and I undertake to comply with it.
2. To the best of my knowledge, there is no reason why I should not serve as an Arbitrator in this proceeding. I am impartial and independent and have no impediment arising from the Code of Conduct.
3. I attach my current curriculum vitae to this declaration.
4. In accordance with article 11 of the Code of Conduct, I wish to make the following disclosure and provide the following information:

[Insert relevant information]

5. I confirm that as of the date of this declaration, I have no further circumstance or information to disclose. I shall make further disclosures based on new or newly discovered circumstances and information as soon as I become aware of such circumstances and information.

Annex 2 (Assistants)

Declaration

1. I have read and understood the attached UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution (the “Code of Conduct”) and I undertake to act in accordance with it.
2. I confirm that at the date of this declaration, I am not aware of any circumstance that would preclude me from acting in accordance with the Code of Conduct.

ADR Special Session on ISDS Reform



**UNCITRAL Code of Conduct for Arbitrators in
International Investment Dispute Resolution
(adopted in July 2023)**

**UNCITRAL Code of Conduct for Judges in
International Investment Dispute Resolution
(adopted in principle in July 2023)**



Code for arbitrators (adopted): main provisions

Article 2: Application of the Code

Possible application in non-IIDs by agreement of parties | Complements provisions in the instrument of consent

Article 4: Limit on multiple roles

Concurrent ban as counsel or expert witness if same measures, parties or provisions of same IoC | Time-barred for former arbitrators | Party autonomy

Article 8: Confidentiality

Prohibition to disclose or comment but exceptions

Article 11: Disclosure obligations

Robust disclosure: "any circumstances likely to give rise to justifiable doubts" + mandatory list



Article 3: Independence & impartiality

Principle | Non-exhaustive list of obligations and prohibitions, supplemented by examples in Commentary

Article 7: Ex parte communication

Prohibited in principle but exceptions

Article 10: Assistant

Ensure that the assistant acts in accordance with the Code | Arbitrator's responsibility

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Code for arbitrators (adopted): Implementation and next steps

December 2023: Expected endorsement and recommendation by the **UN General Assembly**

I

Voluntary compliance during transition phase (Code as soft law)

II

Make reference to the Code in **future international investment instruments and domestic legislations**

III

Inclusion of the Code in a **multilateral instrument** for ISDS Reform possibly amending existing treaties

IV

Application of the Code by / Role of **arbitral institutions?**

V

Adoption by **ICSID?**

VI

Various options and expected outcomes

! Gradual implementation
! Need for uniform approach

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Code for judges (adopted in principle)

Structure and provisions similar to code of conduct for arbitrators with adjustments

- ❑ Result of discussions on a joint code for “adjudicators”
- ❑ Applies only to members (or candidates) of a standing mechanism
- ❑ Ban on multiple roles as counsel or expert witness in any other proceeding | possibility as arbitrator = future rules of standing mechanism | limit for former judges

What adoption “in principle” means

- ❑ Text adopted pending necessary adjustments once/if the standing mechanism is established
- ❑ No reconsideration of agreed points during that process

Next steps

- ❑ Expected endorsement and recommendation by the Sixth Committee in December 2023
- ❑ Further discussions in WGIII on a standing mechanism scheduled for 2024
- ❑ Inclusion of the Code as part of the multilateral instrument for ISDS Reform or the Rules of the standing mechanism

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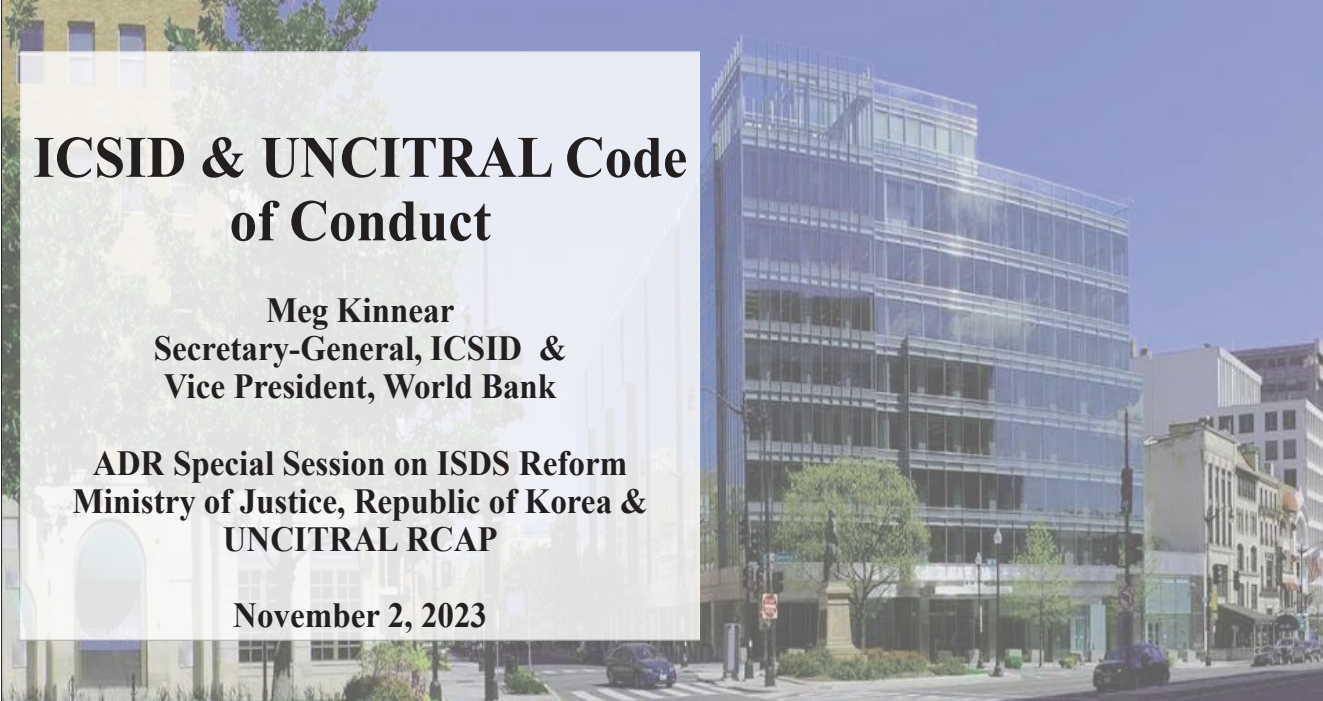
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Further information:
<https://uncitral.un.org/>



International Centre for
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ICSID & UNCITRAL Code of Conduct

Meg Kinnear
Secretary-General, ICSID &
Vice President, World Bank

ADR Special Session on ISDS Reform
Ministry of Justice, Republic of Korea &
UNCITRAL RCAP

November 2, 2023



History

- Code of Conduct was requested by ICSID MS in 2017 during amendment process
- UNCITRAL WG III decided to consider a Code at same time
- ICSID & UNCITRAL Secretariats agreed to work together on a single Code, with caveat that ICSID would take the “final” Code back to its membership to consider its application in ICSID proceedings
- ICSID Secretariat fed into the drafting process, but discussions were held exclusively at WG III
- UNCITRAL Commission adopted Code text and commentary on July 8, 2023

Article 1: Definitions

For disputes between
investor and State/REIO
arising from treaty, contract
or law (IID)

Note distinction of
Candidate (contacted),
Arbitrator (member of
Tribunal), Former Arbitrator
[Commentary para 10]

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Article 2: Application of Code - Conflicts

- Applies to candidate, arbitrator and former arbitrator, as specified
- Conflicts formula in Art. 2(2):
 - *“If the instrument of consent contains provisions on the conduct of an Arbitrator, a Candidate or a former Arbitrator, the Code shall **complement** such provisions. In the event of any incompatibility between the Code and such provisions, the latter shall prevail to the extent of the **incompatibility**.”*
- Where Code and provisions in instrument of consent can stand together, apply both; if they cannot be applied at same time (incompatibility), instrument of consent prevails

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Article 3: Independence & Impartiality

- Consistent with ICSID case law to date
- Elaboration in Art. 3(2) seems to fall within concepts applied to date at ICSID

Article 3 – Independence and impartiality³

1. An Arbitrator shall be independent and impartial.
2. Paragraph 1 includes the obligation not to:
 - (a) Be influenced by loyalty to any disputing party or any other person or entity;
 - (b) Take instruction from any organization, government or individual regarding any matter addressed in the IID proceeding;
 - (c) Be influenced by any past, present or prospective financial, business, professional or personal relationship;
 - (d) Use his or her position to advance any financial or personal interest he or she has in any disputing party or in the outcome of the IID proceeding;
 - (e) Assume any function or accept any benefit that would interfere with the performance of his or her duties; or
 - (f) Take any action that creates the appearance of a lack of independence or impartiality.

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Article 4: Double Hatting

- Art. 4(1): arbitrator cannot act concurrently as a legal representative or an expert witness in any other proceeding involving:
 - (a) The same measure(s);
 - (b) The same or related party (parties); or
 - (c) The same provision(s) of the same instrument of consent.
- Art. 4(2) – (4) – prohibition lasts 3 years after proceeding involving same measure or parties, and 1 year after proceeding involving the same provision of same instrument

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Article 5: Duty of Diligence

- Consistent with ICSID Convention Art. 14
- Makes compliance with ICSID timelines even more important

Article 5 – Duty of diligence⁵

An Arbitrator shall:

- Perform his or her duties diligently;
- Devote sufficient time to the IID proceeding; and
- Render all decisions in a timely manner.

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Article 6: Integrity and Competence

- Consistent with Convention Art. 14
- Art. 6(c) prohibits arbitrator delegating their “decision-making function”
 - Geared to “4th arbitrator” problem

Article 6 – Integrity and competence

An Arbitrator shall:

- Conduct the IID proceeding competently and in accordance with high standards of integrity, fairness and civility;
- Possess the necessary competence and skills and make all reasonable efforts to maintain and enhance the knowledge, skills and qualities necessary to perform his or her duties; and
- Not delegate his or her decision-making function.

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Article 7: No *Ex Parte* Communication

- Exception for pre-appointment interview of party-appointee (not presiding) to determine experience, expertise, competence, skill, availability and existence of conflict
- Interview may not address merits or substance, including jurisdiction

Article 7 – Ex parte communication

1. Unless permitted by the instrument of consent, the applicable rules, the agreement of the disputing parties or paragraph 2, ex parte communication is prohibited.
2. Ex parte communication is permitted when a Candidate engages in a communication with a disputing party that has contacted him or her regarding a potential appointment as a party-appointed Arbitrator for the purpose of determining the Candidate's expertise, experience, competence, skills, availability and the existence of any potential conflict of interest.
3. When permitted under this article, ex parte communication shall not, in any case, address any procedural or substantive issues relating to the IID proceeding or those that a Candidate or an Arbitrator can reasonably anticipate would arise in the IID proceeding.



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Article 8: Confidentiality

- Arbitrator can't disclose information from case or draft decision
 - NB if using “draft” decision technique
- Arbitrator can't disclose deliberations
- Arbitrator can't comment on decision unless made public @ applicable rules
- Arbitrator can't comment while proceeding is pending or subject to post-Award remedy or review



Article 9: Fees and Expenses



In accordance with Code and applicable rules



Conclude fee discussion through the institution if available



must keep accurate record of time and expenses and make available upon request

NB remind arbitrator will be public:
NB quarterly bills;

Article 10: Assistant

- Agree on role, scope and duties of Assistant in advance
- Arbitrator must bring Code to attention of Assistant
- Accurate record required
- Arbitrator must remove Assistant who violates Code

Article 11: Disclosure Obligations

- Broad disclosure obligation
- May raise confidentiality problems more often; disclose to extent possible
- Separate form for assistants in Code



Article 12: Compliance with the Code

- Mandatory compliance
- Enforced through challenge/ recusal
- Quare if further mechanisms will be proposed

Article 12 – Compliance with the Code

1. An Arbitrator and a Candidate shall comply with the Code.
2. A Candidate shall not accept an appointment and an Arbitrator shall resign or recuse himself or herself from the IID proceeding, if he or she is not able to comply with the Code.
3. Any challenge or disqualification of an Arbitrator or any other sanction or remedy is governed by the instrument of consent or the applicable rules.

Code for Judges



ALSO ADOPTED,



SEPARATE INSTRUMENT,
WITH COMMENTARY



MAY HAVE TO UPDATE IF
A MIC/AB IS ADOPTED

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ICSID Implications



- Currently Code is a soft law instrument, so it could be applied in an ICSID case by consent of both parties



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ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

Session 3: Advisory Centre on International Investment Law



ADR Special Session on ISDS Reform

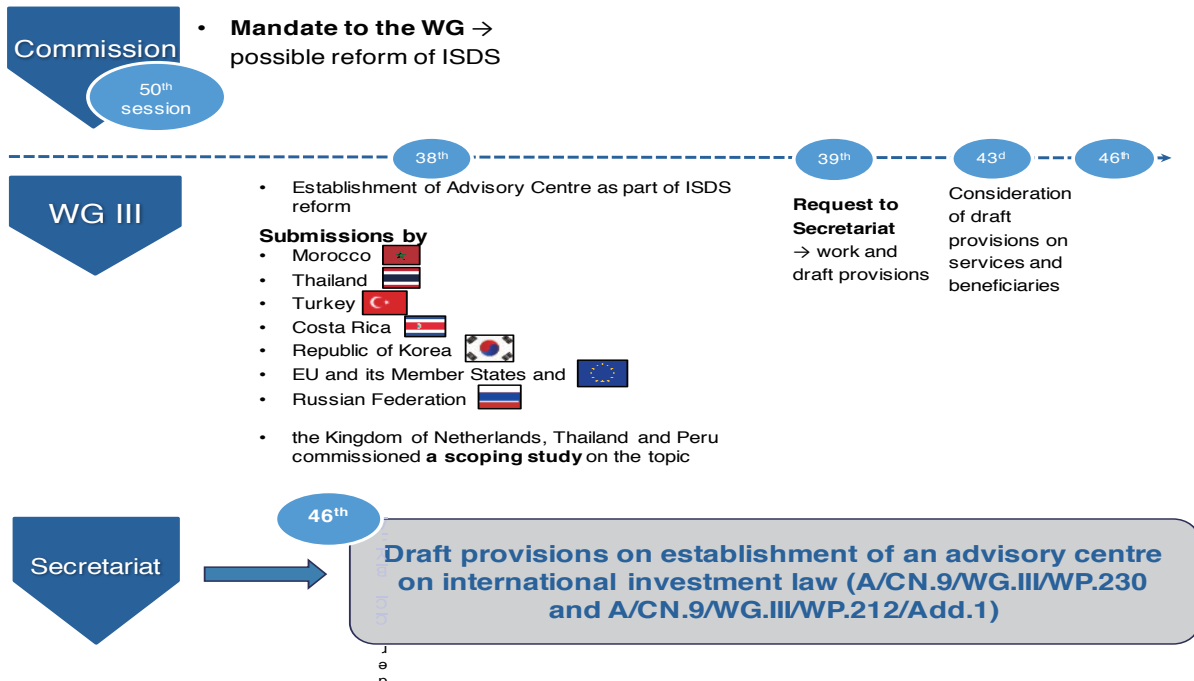


Advisory Centre on International Investment Law

**(the establishment of the Advisory Centre is scheduled to be
presented to the Commission at its next session in 2024)**



Previous Discussions



Why an Advisory Centre?



- **Increasing number of investment disputes:**

Over 130 countries (of which some 80 developing countries, including 18 least developed) have so far faced treaty-based international investment disputes (74 new disputes in 2021 alone)). The number is much higher if based on investment contracts and national investment laws are considered. The international investment law and policy regime is one of the strongest international regimes in existence and it is quite likely that the number of disputes will grow further.



- **High costs and long duration of ISDS proceedings:**

ISDS cases involve high costs for respondent States and raise concerns about the use of public funds.



- **Lack of financial and human resources including experience/capacity:**

Many developing and least developed countries do not have sufficient financial resources and human capacity to deal effectively with highly complex issues of international investment law. They often face difficulties obtaining quality legal representation to help with the defence.

General Considerations



- **Establishment of the advisory centre as a strategic tool for:**

- Addressing identified concerns, including costs of ISDS proceedings, correctness and consistency of decision and access to justice
- Enhancing transparency



- **Scope and structure interlinked with ISDS regime and reform**



- **ACWL as a possible model**

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ADR Special Session on ISDS Reform

MINISTRY OF JUSTICE, REPUBLIC OF KOREA
& UNCITRAL RCAP

Session 4: Dispute Prevention and Mitigation

ADR Special Session on ISDS Reform

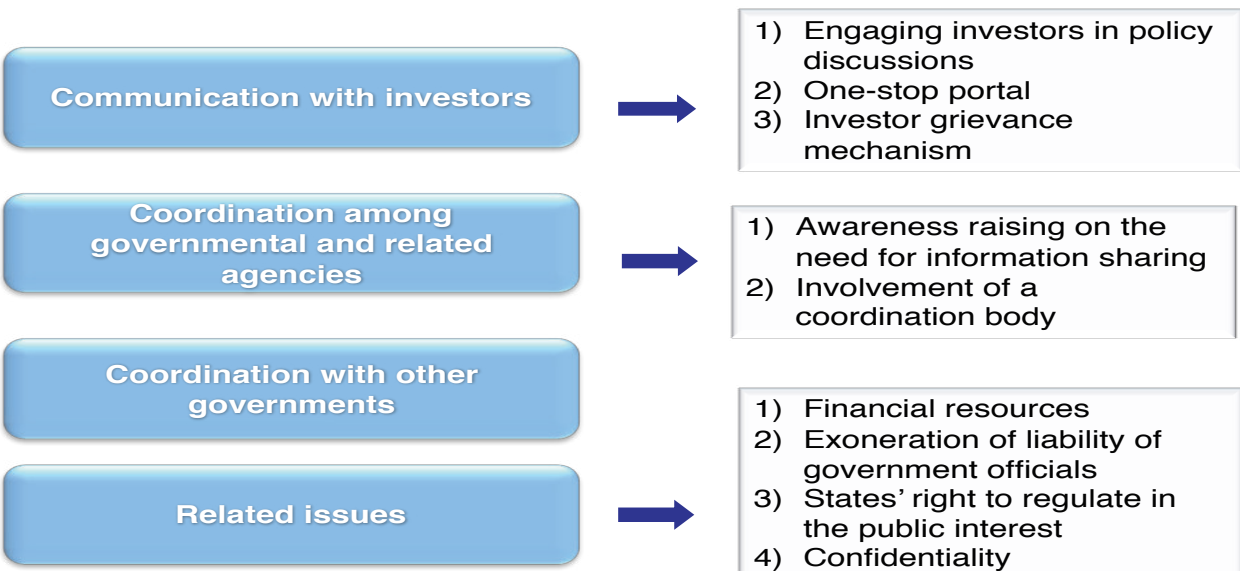
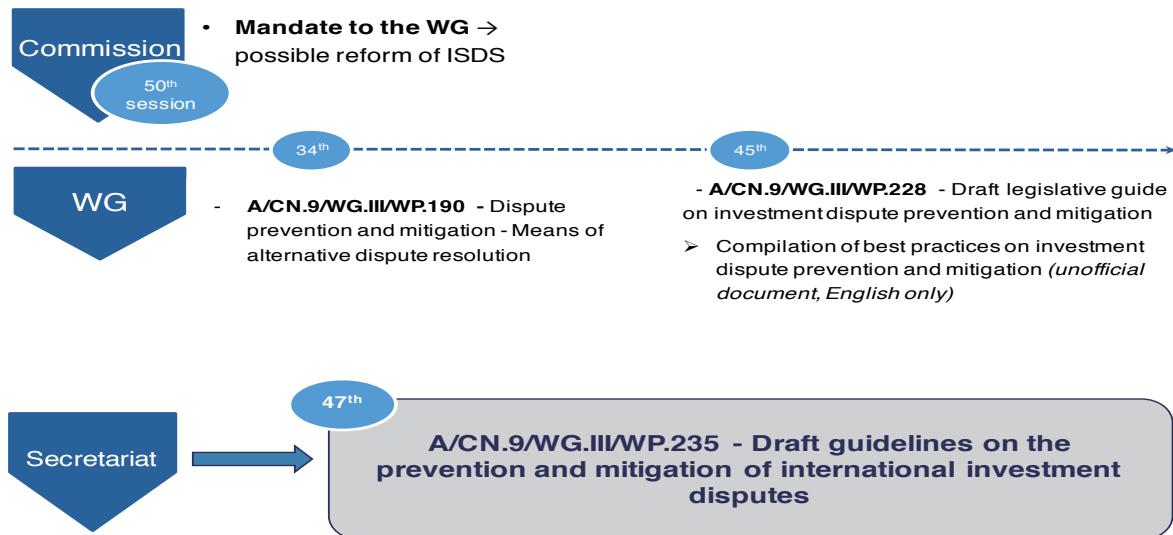


**Draft guidelines on the prevention and mitigation of
international investment disputes**

**(scheduled to be presented to the Commission at
its next session in 2024)**



Previous Discussions



Upcoming sessions



Date	Format	Topic
22–26 January 2024	47th session (Vienna)	<ul style="list-style-type: none"> A/CN.9/WG.III/WP.234 - Annotated provisional agenda A/CN.9/WG.III/WP.235 - Draft guidelines on the prevention and mitigation of international investment disputes A/CN.9/WG.III/WP.236 - Draft provisions on the establishment of an advisory centre on international investment law A/CN.9/WG.III/WP.212/Add.1 - Advisory Centre (Cost and financing) A/CN.9/WG.III/WP.231 - Draft provisions on procedural & cross-cutting issues A/CN.9/WG.III/WP.232 - Annotations to the draft provisions on procedural & cross-cutting issues <ul style="list-style-type: none"> Compilation of related provisions (<i>unofficial document, English only</i>)
7 March 2024	7th intersessional meeting	<ul style="list-style-type: none"> ISDS reform elements and access to justice
1–5 April 2024	48th session (New York)	<ul style="list-style-type: none"> Standing mechanism and an appellate mechanism (TBC)
24 June – 12 July 2024	57th Commission session (New York)	<ul style="list-style-type: none"> Advisory Centre (TBC) Draft guidelines on the prevention and mitigation of international investment disputes (TBC)

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